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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,971	07/23/2002	Hermann Winner	10191/2290	4849

26646 7590 12/31/2003

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EXAMINER
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SHRIVER II, JAMES A

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/070,971

Applicant(s)

WINNER ET AL.

Examiner

J. Allen Shriver

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-9 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 10-13 and 17-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's submittal of an amendment was received on October 6, 2003, wherein claims 5-7 were amended and new claims 9-20 were added.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. **Claims 5-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Janky et al. (US Patent 6,067,031).** Janky et al. discloses a device for controlling distance for a motor vehicle comprising a distance control device (13) for determining a setpoint time gap with respect to a vehicle driving ahead as a function of traveling speed and of a driver-specified minimum time gap; and at least one sensor for recognizing a poor visibility condition, the at least one sensor including at least one sensor for detecting a visual range in a vicinity of the vehicle using reflection measurement (See column 16, line 25+), the at least one sensor including at least one sensor (171) for detecting a road condition and at least one sensor (193) for detecting a level of brightness and adapted to recognize darkness (See column 17, line 29+), wherein, in response to the poor visibility condition, the distance control device increases the setpoint time gap

Art Unit: 3618

determined for normal visibility; wherein the at least sensor for detecting a road condition functions one of optically and by radar, the road condition including whether the road is wet or covered with snow (See column 15, line 25+).

In regards to claim 5, although Janky et al. does not specifically disclose time gaps between the vehicles, Janky et al. does disclose monitoring the velocities and distances between first and second vehicles to control a safe distance between the vehicles, therefore, Janky et al. does inherently disclose maintaining time gaps between the vehicles. By maintaining the velocities and distance between the first and second vehicles, Janky et al. is inherently controlling the time gap between the two vehicles.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 7-8 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janky et al. (US Patent 6,067,031).** Janky et al. discloses a device for controlling distance for a motor vehicle as set forth above, but does not specifically disclose wherein the distance control device increases the setpoint time gap during the poor visibility condition by 20-30% compared to normal visibility. Janky et al. does disclose adjusting the distances (vehicle-to-vehicle separation) when the vehicle is operated in inclement weather conditions, such as heavy fog (See column 8, line 60+). At the time of the invention, it would have been obvious to a

Art Unit: 3618

person of ordinary skill in this art to adjust the time gap (distances between vehicles) during poor visibility by 20-30% compared to normal visibility in Janky et al. The motivation for doing so would have been to take into account the weather conditions in providing a safe distance to stop between the vehicles.

In regards to claim 7, Janky et al. does disclose wherein the at least one sensor for detecting a brightness, but does not specifically disclose using at least one photodiode (See column 17, line 1+). The sensor disclosed in Janky et al. does determine the brightness of the surroundings by measuring the intensity of the reflected light beam (See column 16, line 51+). A photodiode is a photoelectric semiconductor device for detecting and measuring the intensity of radiant energy (as light). Therefore, even though Janky et al. does not specifically disclose using a photodiode, the sensor disclosed performs the same function of measuring the intensity of the reflected light to measure the brightness of the surroundings. Therefore, it would have been obvious to a person of ordinary skill in this art to use any type of sensor that detects the brightness of the surroundings.

**6. Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janky et al. (US Patent 6,067,031) in view of Schierbeck et al. (US Patent 5,812,321).** Janky et al. Discloses the device as set forth above, but does not disclose wherein the at least one sensor further includes a detector that detects a circuit state of headlights of the motor vehicle. Schierbeck et al. Discloses a sensor that detects a circuit state of the headlights of a motor vehicle (See column 6, lines 26-30). At the time of the invention, it would have been obvious to a person of ordinary skill in this art to provide the sensors disclosed in Janky et al. with detectors to detect the circuit state of the headlights as taught by Schierbeck et al. The motivation for

Art Unit: 3618

doing so would have been to inform the driver of the activated state of the headlights upon powering down of the vehicle.

***Allowable Subject Matter***

7. Claims 10-13 and 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: In regards to claims 10 and 17, the prior art did not disclose wherein the driver-specified minimum time gap is modified to account for visibility condition by increasing the driver-specified minimum time gap using a first linear coefficient representing visibility due to weather conditions and a second linear coefficient representing visibility due to brightness.

***Response to Arguments***

9. Applicant's arguments filed October 6, 2003 have been fully considered but they are not persuasive. On page 5 of Applicant's remarks, Applicant argues that Janky is using the same light sensor to determine both road conditions and brightness in contrast to the claimed subject matter, which includes at least one sensor for detecting road conditions and at least one sensor for detecting brightness. Examiner disagrees with this argument because as set forth in Janky et al., two sensors are used, the first sensor (171) detects the road conditions and a second sensor (193) is used for detecting brightness.

On pages 6-8, Applicant contends that the Examiner has relied upon hindsight, reconstruction and speculation, and has not set forth a proper obviousness finding in regards to claims 7-8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, Examiner maintains that a photodiode is a photoelectric semiconductor device for detecting and measuring the intensity of radiant energy (as light); and therefore, even though Janky et al. does not specifically disclose using a photodiode, the sensor in Janky et al. performs the same function of measuring the intensity of the reflected light to measure the brightness of the surroundings. Therefore, a person of ordinary skill in this art would have the requisite skill to use various types of sensors to measure the intensity of the reflected light. Additionally, in regards to increasing the setpoint time gap by 20-30% during poor visibility, it is notoriously old and well known that during periods of poor visibility, drivers reduce their speed and increase their following distance so as to avoid accidents, therefore, it would have been reasonable for a person of ordinary skill to increase the time gap by 20-30%.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Takahashi (US Patent 6,059,686) is relied on to show a speed control device having one sensor detecting the road surface state (6) and another second sensor for detecting illumination (27). Kover, Jr. (US Patent 5,592,146) and Kobayashi (US Patent 6,254,259 B1) are relied on to show a vehicle wherein the activation state of the headlights is detected.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (703) 308-1224. The examiner can normally be reached on Mon-Thurs 7:30-6:00.



Art Unit: 3618

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

J. Allen Shriver  
Examiner  
Art Unit 3618

JAS  
JAS

*Brian L. Johnson*

3/12/19/03

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